IN RE MOBIL OIL CORPORATION

EPCRA Appeal No. 94-2

FINAL DECISION

Decided September 29, 1994

Syllabus

Mobil Oil Corporation (Mobil) appeals an interlocutory order of the Presiding Officer denying Mobil's motion to dismiss a complaint filed by U.S. EPA Region II, and an initial decision assessing a civil penalty against Mobil of $75,000 for violation of the emergency release reporting provisions of § 304 of the Emergency Planning and Community Right-To-Know Act (EPCRA), 42 U.S.C. § 11004. The Region's complaint alleged that Mobil violated EPCRA § 304 by failing to provide immediate notice to the local emergency planning committee (LEPC) of a release of sulfur dioxide to the air from Mobil's Paulsboro, New Jersey, refinery. Mobil did not report the release to the LEPC until ten days after the release. Mobil sought dismissal of the complaint on the grounds that the release was a "federally permitted release" under EPCRA § 304(a)(2)(A), because Mobil has a Clean Air Act State Implementation Plan permit authorizing certain releases of sulfur dioxide, although the release at issue was above the permit's emission limits. EPCRA § 304(a)(2)(A) exempts "federally permitted releases" (as defined in § 101(10) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)) from EPCRA reporting requirements. The Presiding Officer denied Mobil's motion and, following an evidentiary hearing, held that Mobil could have reported the release three days earlier than it did, and therefore Mobil violated EPCRA § 304. The Presiding Officer imposed a total civil penalty of $75,000 against Mobil for the violation ($25,000 for each day reporting was delayed).

Held: First, we affirm the decision of the Presiding Officer denying Mobil's motion to dismiss the complaint on the grounds that the release of sulfur dioxide was exempt from EPCRA reporting requirements as a "federally permitted release." We agree with the Presiding Officer that the exemption is properly read as being limited to releases in conformance with permit and regulatory requirements. This interpretation is strongly supported by the legislative purposes and histories of EPCRA and CERCLA.

Second, with respect to the Presiding Officer's penalty assessment, we conclude that, with proper diligence, Mobil could have reported the release five days earlier than the actual report was made. The evidence demonstrates that Mobil did not give emergency reporting sufficient priority following the release, but instead focused its resources on continuing its usual operations. We further conclude that the Presiding Officer's penalty assessment was not consistent with the EPCRA Penalty Policy in certain respects. We assess a civil penalty against Mobil of $8,250 for the first day of violation, and a penalty of $5500 for each of the additional four days, for a total penalty of $30,250.